

THE GOVERNOR'S REGULATORY REVIEW COUNCIL

Annual Report

Under A.R.S. § 41-1051(F)

G. Alex Turner, Chair
Jeanne M. Hann, Administrator
July 31, 2005

THE GOVERNOR'S REGULATORY REVIEW COUNCIL

July 1, 2004 through June 30, 2005

The purpose of the Governor's Regulatory Review Council (Council) is to review and approve or return rules; preambles; and economic, small business, and consumer impact statements prepared by state agencies under grants of rulemaking authority from the Arizona Legislature. The standards that the Council uses to decide whether to approve or return an agency's rule-related materials are at A.R.S. § 41-1052(C) through (E).

COUNCIL RESPONSIBILITIES

Under the Administrative Procedure Act, the Council is required to:

1. Review and approve or return, in whole or in part, a rule, preamble, and economic, small business, and consumer impact statement submitted by an agency (A.R.S. § 41-1052(B));
2. Schedule a periodic review of each agency's rules and approve or return, in whole or in part, the agency's report on its review (A.R.S. § 41-1056(B));
3. Receive reports of compliance with time-frame rules from agencies that issue licenses and report results to the governor, president of the senate, and speaker of the house of representatives (A.R.S. § 41-1078);
4. Receive and hear appeals regarding an agency's practice or substantive policy statement (A.R.S. § 41-1033(B));
5. Receive and hear appeals regarding the economic, small business, and consumer impact statement of an agency's rules (A.R.S. § 41-1056.01(D));
6. Receive and hear appeals regarding an agency delegation agreement (A.R.S. § 41-1081);
7. Receive certifications of compliance with A.R.S. § 41-1091 from all agency heads (A.R.S. 41-1091(D)); and
8. Receive reports from agencies regarding their progress toward completing the courses of action established in their five-year-review reports (A.R.S. § 41-1056(H)).

COUNCIL ACTIVITIES

1. Review and Act upon Submitted Rules

A.R.S. § 41-1052 requires an agency to submit and obtain Council's approval of a rule package, which consists of a rule, preamble, and economic, small business, and consumer impact statement, before the rule package is filed with the Secretary of State. In 2004-2005, 39 different agencies submitted 95 rule packages for review and action by the Council. In these packages, the agencies repealed 206 rules, made 384 new rules, amended 467 existing rules, and renumbered 126 existing rules for a total of 1,183 different rulemaking actions. In accordance with A.R.S. § 41-1051(F), a list of agency rules approved by Council under A.R.S. § 41-1052 during this year is appended to this report.

2. Schedule and Act upon Five-year-review Reports

A.R.S. § 41-1056 requires each agency to review all of its rules at least once every five years to determine whether any rule should be amended or repealed and to summarize its findings in a report to Council. During this year, 24 different agencies submitted and received Council's approval of 52 five-year-review reports. The reports summarized reviews of 1,085 rules. The agencies determined that 600 (55 %) of these rules need to be repealed or amended and provided the Council with a schedule of when the planned rulemakings will be completed. A list of agency five-year-review reports approved by Council this year under A.R.S. § 41-1056 is appended to this report.

Council is concerned about the number of agencies that review and report on the same rules that they reviewed and reported on five years before without completing the course of action established in the previous five-year-review report. This concern applied to ten of the 24 agencies that submitted reports this year. These agencies and the submitted reports are:

- Economic Security, Department of: Title 6, Chapter 13 (State Assistance Program);
- Economic Security, Department of: Title 6, Chapter 14 (Food Stamps);
- Environmental Quality, Department of: Title 18, Chapter 13, Article 16 (Best Management Practices for Petroleum Contaminated Soil);
- Health Services, Department of: Title 9, Chapter 4 (Non-communicable Diseases);
- Health Services, Department of: Title 9, Chapter 10, Article 11 (Home Health Agencies) and Article 14 (Recovery Care Centers);
- Health Services, Department of: Title 9, Chapter 19 (Vital Records);
- Industrial Commission: Title 20, Chapter 5, Article 5 (Elevator Safety), Article 8 (OSH Rules of Procedure), and Article 10 (Wage Claims);
- Land Department: Title 12, Chapter 5, Article 20 (Common Mineral Materials) and Article 21 (Oil and Gas Leases);
- Nursing Care Institution Administrators and Assisted Living Managers, Board of Examiners: Title 4, Chapter 33, Article 4 (Assisted Living Facility Manager Certification);
- Osteopathic Examiners, Board of: Title 4, Chapter 22;
- Physician Assistants, Regulatory Board of: Title 4, Chapter 17;

- Revenue, Department of: Title 15, Chapter 2 (Income Tax);
- Transportation, Department of: Title 17, Chapter 2, (Aeronautics Division);
- Transportation, Department of: Title 17, Chapter 3, Article 7 (Highway Encroachment Permits);
- Transportation, Department of: Title 17, Chapter 4, Article 5 (Safety).

3. Receive Reports on Progress toward Completing the Courses of Action Established in Five-year-review Reports

A.R.S. § 41-1056(H) requires agencies to report on their progress toward completing the courses of action established in their five-year-review reports. All 59 of the agencies required to submit a progress report this year¹, did so. Forty-six of them (78 %) reported lack of progress toward completing one or more of the courses of action established in their five-year-review reports. A list of these agencies and the rules on which they report lack of progress is appended to this report.

4. Receive Reports of Compliance with Time-frame Rules

All agencies that issue licenses are required by A.R.S. § 41-1073 to make rules establishing overall time frames during which the agency will decide either to grant or deny each license type. Two agencies still have not made the time-frame rules required by statute:

- Land, Department of
- Osteopathic Examiners in Medicine and Surgery, Board of

In accordance with A.R.S. § 41-1078(B), on December 1, 2004, the Council submitted a report regarding agencies' compliance with their time-frame rules during the 2003-2004 fiscal year to the Governor, the President of the Senate, and the Speaker of the House of Representatives. A copy of the report and summary form are appended to this report.

5. Receive and Hear Appeals Regarding an Agency's Practice or Substantive Policy Statement, Regarding the Economic, Small Business, and Consumer Impact Statement of an Agency's Rules, or Regarding an Agency Delegation Agreement

Appeal of an Agency Delegation Agreement

No appeal was made to Council regarding an agency delegation agreement.

¹ An agency is required to submit a report if it reported lack of progress in last year's report or if it submitted a new five-year-review report to Council during this year.

Appeal of an Agency Practice or Substantive Policy Statement

A.R.S. § 41-1033(B) allows a person to appeal to Council an agency's decision not to review an existing practice or substantive policy statement that the person asserts constitutes a rule. Council received two appeals under A.R.S. § 41-1033 this year.

In the first appeal, the Arizona Chamber of Commerce, Greater Phoenix Chamber of Commerce, Arizona Association of Industries, and Water Quality Coalition appealed the decision of the Arizona Department of Environmental Quality to review and initiate a rulemaking regarding the sampling and assessment methodology that ADEQ used to develop the state's 2004 impaired surface waters list. After hearing the appeal, Council voted to dismiss it.

In the second appeal, Southwest Catholic Health Network dba Mercy Care Plan appealed the decision of the Arizona Health Care Cost Containment System to review and initiate a rulemaking regarding a change in the administrative overhead allowance used to calculate losses in two particular AHCCCS programs; the PPC Program and the Title IX Waiver Reconciliation Program. After hearing the appeal, Council voted to deny the appeal.

Appeal of an Agency Economic, Small Business, and Consumer Impact Statement

No appeal was made to Council regarding the economic, small business, and consumer impact statement of an agency's rules.

6. Receive Certifications of Compliance with the Substantive Policy Statement Directory Requirement

A.R.S. § 41-1091 requires all agencies to publish annually a directory summarizing the subject matter of all currently applicable rules and substantive policy statements. The directory, rules, substantive policy statements, and any materials incorporated by reference must be kept in one location and open to public inspection. Under A.R.S. § 41-1091(D), an agency head is required annually to certify to the Council that the agency is in compliance with this requirement.

One hundred nineteen agencies submitted letters certifying their compliance during this year. As required by A.R.S. § 41-1051(F)(2), the four agencies that failed to submit the required certification are listed:

- Citizens Clean Elections Commission
- Education, Board of
- Education, Department of
- Optometry, Board of